

United States District Court  
Central District of California

BONDED APPAREL, INC.,

Plaintiff,

v.

R2D APPAREL, INC.; RABIN  
ARREHBORI; MRR2, INC.; REYMOND  
ARREHBORI; ROSS STORES, INC.  
d/b/a ROSS DRESS FOR LESS;  
BURLINGTON STORES, INC. d/b/a  
BURLINGTON COAT FACTORY; THE  
TJX COMPANIES, INC. d/b/a T.J.  
MAXX d/b/a MARSHALLS; DOES 1  
through 110, inclusive; M.R.R. FABRIC,  
INC.,

Defendants.

Case No. 2:15-cv-04406-ODW (JEM)

**ORDER DENYING PLAINTIFF'S  
SECOND *EX PARTE* APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER [33]**

Pending before the Court is Plaintiff Bonded Apparel, Inc.'s Second *Ex Parte* Application for a Temporary Restraining Order. (ECF No. 33.) This is Plaintiff's second request for immediate injunctive relief—the Court denied Plaintiff's first request on June 19, 2015. (ECF No. 15.) Since denying the first request, Plaintiff effectuated service and all Defendants have appeared. This is a trademark

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1 infringement suit brought under the federal Lanham Act, 15 U.S.C. § 1125, and  
2 California law. (ECF No. 10.)

3 To obtain preliminary injunctive relief, Plaintiff must show: (1) a likelihood of  
4 success on the merits; (2) a likelihood of irreparable harm to the moving party in the  
5 absence of preliminary relief; (3) that the balance of the equities tips in the moving  
6 party's favor; and (4) that an injunction is in the public interest. *Winter v. Natural*  
7 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding  
8 scale" approach, the first and third elements are to be balanced such that "serious  
9 questions" going to the merits and a balance of hardships that "tip sharply" in favor of  
10 the movant are sufficient for relief so long as the other two elements are also met. *All*  
11 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). A  
12 preliminary injunction is "an extraordinary remedy that may only be awarded upon a  
13 clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. The  
14 moving party bears the burden of meeting all four *Winter* prongs. *DISH Network v.*  
15 *FCC*, 653 F.3d 771, 776–77 (9th Cir. 2011).

16 The pending Application, filed on July 30, 2015, alleges that Defendants are  
17 currently infringing Plaintiff's trademarked "Millie" clothing line, which was  
18 established in 2013. (ECF No. 33 at 3.) On July 31, 2015, Defendants Rabin  
19 Arrehbori, Reymond Arrehbori, M.R.R. Fabric, Inc., and R2D Apparel, Inc. filed an  
20 Opposition to the Application. (ECF No. 34.) In their Opposition, Defendants  
21 include a declaration from Defendant Raymond Arrehbori in which Arrehbori swears  
22 under the penalty of perjury that he began selling clothing branded as "Millie" in  
23 2012—a year prior to Plaintiff's alleged creation of its trademarked line. (Arrehbori  
24 Decl. ¶ 8.) Arrehbori attached an invoice dated August 1, 2012, which indicates that  
25 he sold hundreds of pants labeled as "Millie." (*Id.*, Ex. 3.)

26 This declaration raises a question of fact regarding the ownership of the mark in  
27 question. Plaintiff is not likely to succeed on the merits of its trademark infringement  
28 claim if Defendants were the first to use the "Millie" trademark on clothing. *See*

1 *Sengoku Works Ltd. v. RMC Int'l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996) (“To  
2 acquire ownership of a trademark it is not enough to have invented the mark first or  
3 even to have registered it first; the party claiming ownership must have been the first  
4 to actually use the mark in the sale of goods or services.”). While Plaintiff claims that  
5 it is clearly entitled to equitable relief, Defendants muddled all clarity in their  
6 Opposition. Plaintiff bears the burden of making a “*clear* showing” that it is likely to  
7 succeed on the merits of its trademark infringement claim, *see Winter*, 555 U.S. at 21  
8 (emphasis added), and it failed to carry that burden here.

9 Preliminary injunctive relief is also not appropriate because Defendants  
10 represent that there is no longer any threat of irreparable harm. Defendants claim they  
11 no longer possess any inventory branded with “Millie” and “they will not manufacture  
12 or sell any more products with the name Millie on it.” (ECF No. 34 at 3.) Without  
13 any continued threat of irreparable harm to Plaintiff, preliminary equitable relief is not  
14 necessary.

15 For the reasons stated above, Plaintiff is not entitled to a temporary restraining  
16 order. The Court hereby **DENIES** Plaintiff’s Second *Ex Parte* Application for a  
17 Temporary Restraining Order in full. (ECF No. 33.) If Plaintiff believes that  
18 additional facts or further argument will support its position, then Plaintiff should  
19 comply with Local Rule 6-1. Full and responsive briefing, and not an *ex parte*  
20 temporary restraining order, is the preferred procedure to resolve disputes. The Court  
21 will not entertain any further applications for temporary restraining orders.

22 **IT IS SO ORDERED.**

23 August 4, 2015

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26 **OTIS D. WRIGHT, II**  
27 **UNITED STATES DISTRICT JUDGE**  
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